Law for Business 15th edition Barnes Solutions Manual

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CHAPTER 2
DISPUTE SETTLEMENT

Outline

I. Means of Dispute Settlement
   A. Negotiation – those involved in the dispute settle it among themselves
   B. ADR (Alternative Dispute Resolution)
      1. Mediation – an outside party, the mediator, assists in finding a compromise
      2. Arbitration – an outside party, the arbitrator, has the power to settle the dispute
      3. International Alternative Dispute Resolution – arbitration on a global scale
      4. Mini/Summary Trial – a shortened version of a trial is held, without a judge or jury, to inform the disputing company executives of the case to assist in a settlement
      5. Private Judging – a retired judge is hired to hear and decide the outcome of a dispute
      6. Other Dispute Resolution Mechanisms
   C. The Courts – a court of law determines the outcome of the dispute
   D. Jurisdiction – the authority of a court to decide a case

      Example: OBB Personenverkeher A.G. v. Sachs: The court found Sach's injuries all took place in Austria. It reasoned that the crucial moment in a personal injury case is where the point of contact causing the injury occurs. Location of ticket purchase is not enough of a connection to grant jurisdiction to a different country.

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II. State Courts
   A. Inferior Courts - not courts of record, therefore there can be no appeal
   B. Trial Courts – find relevant facts, identify the rule of law, and decide the case, which can later be appealed.
   C. Appeals Courts – hear cases that have been appealed from the trial courts

III. Federal Courts

Cases heard in the federal court are either cases involving a federal question or cases in which there is diversity of citizenship between the parties.

   A. District court

      District courts are the general jurisdiction federal trial courts.

   B. Special Courts

      Special Courts are the special jurisdiction federal trial courts.

   C. Courts of Appeals

      Court of Appeals are separated into 13 circuits generally based on geographic location.

   D. U.S. Supreme Court

      The U.S. Supreme Court is the highest court in the country.

III. The Adversary System – trial through the battle of words
   A. Functions of the Judge – unbiased and passive, the judge keeps order in the court
   B. Advantages and Disadvantages

      Advantages include exposing deception through cross-examination. A disadvantage of the system is that the caliber of the attorneys may decide the case.

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IV. Procedure
  A. The Functions of Procedure – to promote fairness
  B. Pleadings
     Pleadings include the complaint, the answer, and the reply.
  C. Discovery
     Discovery involves the parties gathering evidence for trial.
  D. The Trial

V. Appellate Procedure
  A. Basis for Appeal
     The court must have made an error of law.
  B. The Appeal
     The Appeal must be filed in the proper court within the established time period.
  C. Results of Appeal

VI. Court Problems and Proposed Solutions
  A. Some Criticisms
     One of the greatest problems with the court system is the delay.
  B. Proposals
     One proposal to solve the problem of delay is to remove whole classes of cases from the courts.

Learning Objectives

1.Describe the basic structures and responsibilities of the state and federal courts.
2.Explain what a plaintiff must demonstrate in order to have standing to sue.
3.Describe how courts decide whether they have jurisdiction.
4.Explain how venue and forum non conveniens interact with jurisdiction.
5.Describe the roles of judges and lawyers in the adversary system.
6.Identify the differences between the attorney–client and work product privileges.
7.Describe the different procedural stages of a lawsuit.
8.Explain how appellate cases differ from trial court cases.
9.Compare and contrast the various alternative dispute resolution mechanisms.

Learning Hints

1. Most cases are heard in state (rather than federal) courts. An important distinction between state inferior courts and state trial courts of general jurisdiction is the fact that inferior courts are not courts of record. This means that in many instances, an appeal from a state inferior court will result in a new trial at the state trial court level.
2. In most cases, there are two aspects to jurisdiction. The first is the ability of the court to hear a particular kind of case--this is referred to in the textbook as "subject-matter jurisdiction." For example, a state may set up special courts to handle only a certain type of case, such as special divorce, probate, and juvenile courts. The other aspect of jurisdiction is the territorial or geographical reach of the court. This issue arises mainly during discussions of the state courts, for federal courts have nationwide jurisdiction.
3. In federal cases brought under diversity jurisdiction, the amount involved must be at least $75,000. There is no minimum amount of money that is required for federal question jurisdiction to exist.
4. Many civil lawsuits may be brought either in a state trial court or in a federal District Court. For

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example, a lawsuit against a driver from another state for an amount over $75,000 can be brought in either state trial court or in federal District Court. The existence of this choice creates strategic questions for the plaintiff's lawyer. Keep in mind also that the defendant may ask to have a case filed in state trial court removed to federal District Court.

5. With very few exceptions, cases do not begin in appellate courts. Appellate courts are usually limited to correcting alleged errors of law (not fact) made at the trial court level.
6. Be aware of the ways in which the basic state court structure or hierarchy parallels the basic federal court structure or hierarchy.
7. The summons and the complaint, while often served on the defendant together, are not the same, and serve very different functions.
8. The motion to dismiss disposes of many cases. The most common form of the motion to dismiss goes to the legal sufficiency of the complaint, and states that even if the facts stated in the complaint are true, the plaintiff still cannot recover because there is no legal remedy for such a situation. For this reason, it is often said that the motion to dismiss amounts to saying "So what?" to the plaintiff's complaint.
9. The motion for a directed verdict and the motion for judgment notwithstanding the verdict are both ways of asking the judge to decide the case instead of the jury. Basically, both assert that no reasonable jury could decide in favor of the other party. The existence of these motions reveals the American legal system's ambivalence about juries, because if all juries were reasonable, the motions would not be necessary.
10. Generally speaking, the appellate courts only review legal errors that one party claims were made by the trial court--not errors in deciding questions of fact. Legal errors include at least the following: lack of jurisdiction, rulings during discovery, rulings on motions to dismiss, evidentiary rulings at trial, rulings on motions for directed verdict and motions for judgment notwithstanding the verdict, and the judge's findings of law (if there was no jury present at the trial).

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True-False

In the blank provided, put "**T**" if the statement is True or "**F**" if the statement is False.

_____ 1. In some cases, a federal administrative agency decision may be appealed to the U.S. Court of Appeals.

_____ 2. Parties who want to change the place where their trial will be held ask for a "court of record".

_____ 3. The decision of a mediator is binding upon the parties.

_____ 4. The decision of a state court can never be appealed to the U.S. Supreme Court.

_____ 5. In the American legal system, a judge cannot overturn a jury verdict.

_____ 6. A mini-trial is conducted under the supervision of the court.

_____ 7. The Tax Court would have jurisdiction to hear appeals cases involving decisions made by the Internal Revenue Service.

_____ 8. A writ of certiorari is the most common way to appeal a case to the Supreme Court.

_____ 9. Cases heard in the federal courts must involve either a federal question or situations in which there is diversity of citizenship between the parties.

_____ 10. A motion to dismiss may be requested by the defendant if it is clear that the plaintiff does not have a case.

Multiple Choice

Circle the best answer.

1. Which of the following is not true of the appellate procedure?

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a. The appellate court hears witnesses and gathers new evidence.
b. A transcript of the trial must be sent to the appeals court.
c. The appealing party must show that material errors occurred in the trial.
d. The appeals court may reverse and remand the decision.

2. If P sues D, and D wants to allege that P's own negligence caused her injury, D should allege this in:
a. The complaint.
b. The answer.
c. The reply
d. The counterclaim.

3. Venue concerns:
a. Whether a federal court has jurisdiction.
b. Whether a state court has jurisdiction.
c. The most appropriate place for the action to be brought.
d. Whether a defendant has been properly served with process.

4. Which of the following is not true of trials?
a. Preponderance of evidence is the standard used in civil trials.
b. Proof beyond a reasonable doubt is the standard used in criminal trials.
c. The state can make a motion for judgment n.o.v. when the defendant is acquitted in a criminal trial.
d. A directed verdict may be granted if the plaintiff's evidence is not sufficient to support her allegations.

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5. Eve attempts suicide by locking herself inside the trunk of her car. Someone discovers Eve after several days. She is still alive. Eve sues the manufacturer of her car for a large amount of money because it did not provide for a latch inside the trunk. Which of the following may be a good course of action for the car manufacturer in this case?
a. Make a motion to dismiss the case.
b. Make a motion for a directed verdict.
c. Make a motion of judgment n.o.v.
d. Take the case to small claims court.

6. Which of the following is a type of alternative dispute resolution that is binding on the parties?
a. Mediation
b. Mini-trial
c. Private judge
d. Summary jury trial

7. Federal question jurisdiction:
a. Is a type of jurisdiction possessed by state trial courts.
b. Is the most common form of U.S. Supreme Court jurisdiction.
c. Requires that the amount in controversy be at least $10,000.
d. Is jurisdiction over questions arising under federal laws, treaties, and the U.S. Constitution.

8. Which of the following statements is not true?
a. Bob, a resident of New Jersey, sues Ed, a resident of Florida, for $100,000 over a real estate deal.

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Bob must bring his suit in a Florida court.

b. The conflict of laws may guide a federal court in deciding which state's laws to apply in a case.

c. Federal courts have exclusive jurisdiction over bankruptcy cases.

d. You are not required to be represented by an attorney in small claims court.

9. Johnson is a creditor of Barnes. Johnson wants to file a petition to have Barnes declared bankrupt. Which of the following statements is true?

a. Johnson can file his petition in either state or federal court.

b. Johnson should file his petition in U.S. District Court.

c. Only a federal bankruptcy court can hear a bankruptcy case.

d. Bankruptcy cases can be heard in Federal Tax Court.

10. Which of the following is not an inferior court?

a. Justice of the peace

b. U.S. District Court

c. Small claims court

d. Municipal court

Short Essay

1. Briefly describe some advantages and disadvantages of the adversary system.

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2. Andrea and Tom are planning on a late June wedding. Several weeks before the wedding date, Andrea breaks things off with Tom. Tom learns that Andrea sold their shower gifts, withdrew more from a joint checking account than she deposited, and made a large amount of charges on Tom's credit card. Tom sues Andrea. Assuming Tom wins this case, what is one way that the court could enforce its judgment on Andrea?

3. What are the basic steps in a civil lawsuit?

4. The board and faculty of Happy College cannot reach a contract agreement for the school year. Under state law, the next step is for each side to present its case to a mediator. The mediator agrees with the board's arguments. Is the mediator's decision binding upon the two parties? Why or why not?

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5. The "borderless" Internet has created a new wave of jurisdictional issues for our courts. Over the years, the use of "long arm" statutes helped courts ascertain jurisdictional boundaries when courts could find some minimal contact of doing business in a state for it to be able to assert its jurisdiction. How much Internet activity would you consider to be sufficient to satisfy the minimum contact rule?

6. Briefly describe two types of discovery.

7. Briefly discuss the standards for burden of proof in civil cases and criminal cases.

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CHAPTER 2
DISPUTE SETTLEMENT

Answers

True-False

1. T
2. F
3. F
4. F
5. F
6. F
7. T
8. T
9. T
10. T

Multiple-Choice

1. A
2. B
3. C
4. C
5. A
6. C
7. D
8. A
9. C
10. B

Short Answer

1. The truth may be brought out more efficiently in an adversary system. The adversary system may make it difficult for a dishonest judge to control case outcomes. The system may not work so well when the lawyers are not of equal skill and ability. Some witnesses may be confused by questioning in an adversary system.

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2. A writ of garnishment would enable Tom to receive payment from Andrea over time through her salary. Garnishments are regulated by state statutes.

3. The plaintiff files a complaint, serves it with a summons on the defendant, who then files an answer. Defendant may file a counter-claim against plaintiff. There are a number of discovery procedures that may be pursued. The case is set for one or more pre-trial conferences, and then goes to trial (unless settled or dismissed.) Motions, such as a motion for summary judgment or motion to dismiss may be filed prior to or in some cases during trial.

4. No. A mediator makes a recommendation that may or may not be followed. If this case were settled by an arbitrator, the decision would be binding upon both parties.

5. Most courts look at physical presence, contract benefit, or tort-related harm to find minimal contact. More and more cases look at the amount of Internet commerce conducted within its jurisdiction to decide these matters, i.e., the more business conducted, the more likely that jurisdiction is asserted.

6. A deposition is an examination under oath. An interrogatory is a written examination under oath.

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7. In a criminal case, the prosecution must prove beyond a reasonable doubt that the defendant committed the crime. In a civil case, the plaintiff must show a preponderance of evidence that supports his or her claim.

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